



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173044

PRELIMINARY RECITALS

Pursuant to a petition filed March 01, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the iCare in regard to Medical Assistance (MA), a telephone hearing was held on April 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner continues to require the level of care generally found in a nursing home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner receives Family Care Medical Assistance through iCare Independent Care Health Plan at the nursing home level of care. ICare notified her on January 29, 2016, that it determined that she no longer meets the nursing home level of care. Exhibit R-10.
3. The petitioner is a 57-year-old woman diagnosed with intellectual disability, chronic back pain, bipolar/manic depressive disorder, depression, and a history of crack cocaine and alcohol abuse. See, Exhibit R-3.
4. The petitioner is independent in her activities of daily living. She is independent in instrumental activities of daily living, except for money management (she has a representative payee) and transportation (she does not drive but is able to use public transportation). See, Exhibit R-2.
5. The petitioner is able to work outside the home, and has recently been employed with [REDACTED]

DISCUSSION

The petitioner receives Family Care medical assistance benefits at the nursing home level of care. Her care maintenance organization, iCare, contends that she no longer requires this level of care. To continue receiving benefits, she must demonstrate by the preponderance of the credible evidence that her impairments hinder her ability to perform a wide array of activities and instrumental activities of daily living.

The Family Care Program is a health-service delivery system authorized by Wis. Stat. § 46.286 and comprehensively described in Wis. Admin. Code, Chapter DHS 10. It is designed to increase the ability of the frail elderly and those under 65 with disabilities to live where they want, participate in community life, and make decisions regarding their own care. It places a recipient under the roof of a single private provider that receives a uniform fee, called a capitation rate, for each person it serves. The provider is responsible for ensuring that the person receives all the Medicaid and Medicare services available to him. The theory behind the program is that it will save money by providing recipients with only the services they need rather than requiring that they enroll in several programs whose services may overlap. Each CMO signs a contract with the State of Wisconsin that sets forth exactly what services it must provide.

The nursing home level of care, which is also referred to as the comprehensive level of care, requires a person to demonstrate that he requires substantial help from another person by proving that she cannot perform some specified combination of activities and instrumental activities of daily living:

A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.

6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Wis. Admin. Code, § DHS 10.33(2)(c).

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, § DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32)

Agencies must determine eligibility using a uniform functional screening tool prescribed by the Department. Wis. Admin. Code, § DHS 10.33(2)(a). The problem with this requirement is that the Department has changed the screening tool to better comply with the federal government’s long-term waiver provisions, but it has not changed the administrative code to reflect these changes. See DHA Decision No. FCP-44/115906. Because the administrative code has the force of law, I must follow it rather than the screening tool.

The petitioner is a 57-year-old woman diagnosed with intellectual disability, chronic back pain, bipolar/manic depressive disorder, depression, and a history of crack cocaine and alcohol abuse. She lives with her boyfriend. She has no significant physical problems that impair her ability to perform her activities of daily living. She can also perform the majority of her instrumental activities of daily living to at least some degree, although she needs assistance with money management and transportation.

The petitioner testified that she is dependent on the care that she is presently receiving, noting that it helped her obtain a representative payee to address her money management needs, and it also helps her to get her prescriptions. She also reported that her back pain causes her to need assistance getting in and out of the tub, and that she cannot cook as a result of the cramps in her back. This may be true, but I have no equitable powers and must determine whether she continues to meet the nursing home level of care according to the law and evidence in front of me. In essence, the nursing home level of care means that a person requires the level of care generally received in an institution.

Although the petitioner continues to have significant problems, I found little evidence that she continues to meet the nursing home level of care. She works outside of the home without any reported restrictions or the need for a job coach. She is able to use public transportation. She can make routine decisions for herself, but has a representative payee to assist with financial matters

As mentioned, she has no real trouble performing her activities of daily living. Because she can perform her ADLs, she must show that she cannot adequately perform five of his instrumental activities of daily living, that she has a cognitive impairment and cannot perform four of his IADLs, or that she has a complicating condition that limits her ability to meet her needs independently.

Looking at her problems performing her instrumental activities of daily living in a manner most favorable to her, the only areas she has any impairment are medication money management and transportation. Even if I were to add meal preparation to that list, her limitations still only would pertain to three IADLs, so even if she is assumed to have a cognitive impairment, she does not have enough limitations in this area to remain eligible at the nursing home level of care.

This means that to continue to meet the nursing home level of care, she must demonstrate that she has a complicating condition that limits her ability to independently meet her needs. Petitioner has not established that she requires frequent medical or social intervention to safely maintain an acceptable health or developmental status. Nor does she require frequent changes in service due to intermittent or unpredictable changes in her condition. And she does not require a range of medical or social interventions due to a multiplicity of conditions. Thus she does not meet the first prong of the required two-part test she must meet to demonstrate that she has a complicating condition. This means that it is unnecessary to show that she meets the second part.

Based upon this, I find that she is no longer eligible for Family Care at the nursing home level of care under Wis. Admin. Code, § DHS 10.33(2)(c)2.

CONCLUSIONS OF LAW

The petitioner does not meet the nursing home level of care.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of May, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 27, 2016.

iCare
Office of Family Care Expansion
Health Care Access and Accountability